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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,019	07/19/2001	Ian Jeffrey Evans	PPD 50355/UST	2062
22847	7590	08/30/2004	EXAMINER	
SYNGENTA BIOTECHNOLOGY, INC. PATENT DEPARTMENT 3054 CORNWALLIS ROAD P.O. BOX 12257 RESEARCH TRIANGLE PARK, NC 27709-2257			KUBELIK, ANNE R	
		ART UNIT	PAPER NUMBER	
		1638		
DATE MAILED: 08/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/763,019	EVANS ET AL.
	Examiner Anne R. Kubelik	Art Unit 1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 March 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) \_\_\_\_\_ is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-19 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    |   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
|   | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-15, all in part, drawn to a nucleic acid of SEQ ID NO:1, vectors comprising the nucleic acid, plants and plant tissue transformed with the nucleic acid and method of producing the plants.

Group II, claim(s) 1-15, all in part, drawn to a nucleic acid of SEQ ID NO:2, vectors comprising the nucleic acid, plants and plant tissue transformed with the nucleic acid and method of producing the plants.

Group III, claim(s) 1-15, all in part, drawn to a nucleic acid of SEQ ID NO:3, vectors comprising the nucleic acid, plants and plant tissue transformed with the nucleic acid and method of producing the plants.

Group IV, claim(s) 1-15, all in part, drawn to a nucleic acid of SEQ ID NO:4, vectors comprising the nucleic acid, plants and plant tissue transformed with the nucleic acid and method of producing the plants.

Group V, claim(s) 1-15, all in part, drawn to a nucleic acid of SEQ ID NO:5, vectors comprising the nucleic acid, plants and plant tissue transformed with the nucleic acid and method of producing the plants.

Group VI, claim(s) 16-18, all in part, drawn to a translation product of the nucleic acid of SEQ ID NO:1 and a method of topically applying it to plants to control mircroorganisms.

Group VII, claim(s) 16-18, all in part, drawn to a translation product of the nucleic acid of SEQ ID NO:2 and a method of topically applying it to plants to control mircroorganisms.

Group VIII, claim(s) 16-18, all in part, drawn to a translation product of the nucleic acid of SEQ ID NO:3 and a method of topically applying it to plants to control mircroorganisms.

Group IX, claim(s) 16-18, all in part, drawn to a translation product of the nucleic acid of SEQ ID NO:4 and a method of topically applying it to plants to control mircroorganisms.

Group X, claim(s) 16-18, all in part, drawn to a translation product of the nucleic acid of SEQ ID NO:5 and a method of topically applying it to plants to control mircroorganisms.

Group XI, claim(s) 19, in part, drawn to use of the nucleic acid of SEQ ID NO:1.

Group XII, claim(s) 19, in part, drawn to use of the nucleic acid of SEQ ID NO:2.

Group XIII, claim(s) 19, in part, drawn to use of the nucleic acid of SEQ ID NO:3.

Group XIV, claim(s) 19, in part, drawn to use of the nucleic acid of SEQ ID NO:4.

Group XV, claim(s) 19, in part, drawn to use of the nucleic acid of SEQ ID NO:5.

2. The inventions listed as Groups I-XV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking the groups is antimicrobial proteins from *Dahlia merkii*.

This technical feature is disclosed in Broekaert et al (WO 93/05153, cited in the search report).

Broekaert et al teach the amino acid sequence of two such protein in Figure 28; the sequence of nucleic acids that could encode them would be obvious to one of skill in the art. Thus, the

technical feature linking the groups is not special and the Groups are not so linked under PCR

Rule 13.1.

Applicant is reminded that a determination regarding unity of invention is made without regard to whether a group of inventions is claimed in separate claims or as alternatives within a single claim (MPEP 1893(d), last paragraph).

Applicant is advised that for the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Sequence Rules***

3. This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825.

Sequence identifiers are missing from pg 9, lines 24 and 25; pg 10, lines 6-10 and 30-31; pg 11, line 6; pg 13, lines 6-26; pg 14, lines 28-29 and pg 15, line 2. Sequence identifiers are missing from the Brief Description of Figures 7-8, and sequence identifiers for the amino acid sequences are missing from the legends of Figures 1-3.

Full compliance with the sequence rules is required in response to this Office action. A complete response to this Office action must include both compliance with the sequence rules and a response to the issues set forth herein. Failure to fully comply with both of these requirements in the time period set forth in this Office action will be held to be non-responsive.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (571) 272-0801. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (571) 272-0804. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Anne R. Kubelik, Ph.D.  
August 27, 2004



ANNE KUBELIK  
PATENT EXAMINER